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CONSERVANCY DISTRICTS



Montana Legislative Council

September 1966

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CONSERVANCY DISTRICTS

A REPORT TO THE FORTIETH
LEGISLATIVE ASSEMBLY

by the

Montana Legislative Council

November 1966

To Members of the Fortieth Legislative Assembly:

Of the many and varied natural resources of the state, none is more important than water. The development of multiple purpose projects to conserve and develop water resources is one of the most important problems of the state. The Council believes that adoption of new legislation to authorize multiple purpose projects which would recognize all beneficial uses of water, and allocate the costs of projects among all parties receiving benefits, is one promising means of encouraging water development in the state. This report describes conservancy districts, examines conservancy district legislation in other states, and proposes legislation authorizing conservancy districts for Montana.

Respectfully submitted,

SENATOR EARL MORITZ

Chairman

Montana Legislative Council

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1965-66

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SENATE JOINT RESOLUTION NO. 13

Introduced by Thiessen, Nees

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO STUDY WATER CONSERVANCY DISTRICTS AND REPORT ITS FINDINGS TO THE FORTIETH LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA.

WHEREAS, the natural resources of Montana are many and varied and require the combined effort of Federal, state and local agencies to properly and adequately conserve and develop them for the benefit of all of the people, and

WHEREAS, the development of multiple purpose projects to conserve and develop Montana's water resources for flood protection, river control, drainage, water storage, irrigation, industrial and domestic use, waste disposal, pollution control, recreation and other beneficial purposes is one of the most important and complex of conservation problems in this state, and

WHEREAS, other states have through the establishment of water conservancy districts been able to develop through local governmental agencies multipurpose water conservation projects which have brought great benefits to the people within such districts, and

WHEREAS, the preparation of enabling legislation under which water conservancy districts could be established in Montana presents many problems which require intense and detailed study, and

WHEREAS, the making of such studies of water conservancy districts and the preparation of such enabling legislation is needed and desirable.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council study water conservancy districts and their operations in other states and make a detailed study of the enabling legislation which has made possible the establishment of such districts in other states.

BE IT FURTHER RESOLVED, that the Water Conservation Board, the University of Montana, and the Montana State College are requested to provide the Legislative Council with technical advice and other needed assistance in this study, and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings along with any necessary legislation to the Fortieth Legislative Assembly, and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Executive Director of the Legislative Council, the Chairman of the Water Conservation Board, the President of the University of Montana, and the President of Montana State College.

INTRODUCTION

Senate Joint Resolution No. 13 of the 1965 Legislative Assembly noted that the natural resources of Montana are varied and require the combined efforts of governmental agencies at all levels to adequately conserve and develop them for the benefit of all people, that the development of multiple purpose projects to conserve and develop water resources of the state is one of the most important and complex conservation problems of the state, and that the establishment of conservancy districts has allowed other states to develop multiple purpose conservation projects through local governmental agencies. The resolution also noted that a study of conservancy districts and the preparation of enabling legislation to establish conservancy districts is needed and desirable. The Council was asked to study conservancy districts in other states, make a detailed study of enabling legislation that authorizes such districts, and report its findings together with any necessary legislation to the Fortieth Legislative Assembly.

The implementing resolution requested that the State Water Conservation Board, University of Montana, and Montana State University provide technical advice and other needed assistance to the Council. To provide this technical advice and other assistance, a Task Force was appointed composed of Dr. Arnold Bolle, Dean of the School of Forestry, University of Montana; Professor Albert Stone, Law School, University of Montana; Dr. Roy Huffman, Vice President for Research, Montana State University; Assistant Professor Richard Sheridan, Montana State University; Dr. Helmer Holje, Montana State University; and Mr. Dick Fabrick, former member of the State Water Conservation Board.

During the conduct of the study, the Subcommittee and Task Force on Conservancy Districts consulted with a number of persons and organizations and held two public hearings on the content of conservancy legislation. In addition, representatives of the State Water Conservation Board, Fish and Game Commission, and Soil Conservation Service attended meetings to discuss the legislation.

The Council acknowledges, with gratitude, the assistance of the Task Force members and a number of persons, organizations, and state agencies in the conduct of this study. Particular appreciation is due Assistant Professor Richard Sheridan and Professor Albert Stone for their assistance.

Chapter I

DESCRIPTION OF CONSERVANCY DISTRICTS¹

Special Districts

GENERAL

Discussion of the forms of organization of American government normally centers around cities, counties, states, and federal governments. One particular form of organization, however, outnumbers all of these combined—special districts. School districts (a form of special district) are the most numerous organized units of government in the United States and are not considered here. Special districts (other than school) are the second most numerous form of government and provide a wide array of governmental services. In 1962, there were 18,323 special districts in the United States. A special district has autonomy from other units of government, its own taxing and bonding authority, and performs a single or multiple public service. The boundaries of special districts may conform to other existing organized units of government or they may overlap other units of government. Special districts are found in every state of the union. Montana has 192 special districts, Illinois (the highest in the nation) has 2,126, and Washington, D. C. has one. Twenty-four states have fewer special districts than Montana.

When a particular service of government obtains special recognition by the public, a special interest group, or some governmental agency, one of two demands may be expected: (1) the creation of a special district; or (2) an independent board or commission to deal with the function. The public seems to believe that these two organizational patterns assure representativeness and non-partisan technical competence—two highly extolled values in American democracy.

More basic are the practical considerations leading to the demand for autonomous authorities. In the case of special districts, the interested group usually wishes to escape existing constitutional and legislative tax and debt limitations and the unnatural confinement of political boundaries. Special districts are sometimes said to achieve five goals: (1) representativeness; (2) non-partisan technical competence; (3) wide taxing powers; (4) bonding authority; and (5) non-political boundaries.

In addition, special districts are sometimes created as a short-term solution to the problems of the Standard Metropolitan Statistical Area (SMSA). This is particularly true in those states where annexation is difficult or impossible and city-county consolidation and other methods of dealing with metropolitan area problems are impractical. Only 25 Montana special districts are in SMSA's. Almost 30 percent of the nation's special districts are in the SMSA's.

A 1956 New York study of public authorities cited the following factors influencing the creation of special districts:

Financial Reasons

- (1) To finance public improvements without resort to additional taxes;
- (2) To finance improvements through charges upon the users thereof instead of upon the general taxpaying public;
- (3) To finance improvements without conflict with constitutional debt limitations;
- (4) To secure additional revenues and greater financial autonomy for certain activities of regular state agencies;
- (5) To take advantage of Federal loans and grants;
- (6) To finance improvements through revenue bonds without earmarking taxes;
- (7) To facilitate the financing of enterprises taken over from private ownership.

¹ Prepared by Richard Sheridan, Assistant Professor of Government, Montana State University.

Jurisdictional Reasons
Administrative Reasons

- (1) To remove the administration of enterprises from direct control by politically responsible officials;
- (2) To provide a more flexible administrative instrument to manage a commercial-type public enterprise;
- (3) To facilitate the transmission from private to public operation of enterprises.²

The method of financing special districts is thus central to the reasons for their existence. Five methods are employed in the United States: (1) user charges; (2) special assessments; (3) general tax revenues; (4) intergovernmental transfers; and (5) indebtedness. User charges are based on the principle that those receiving the benefits of a governmental project should pay the cost of the project. These accounted for 61.3 percent of the total revenue of all special districts in the United States in 1962. Special assessments also apply the principle of levying a charge to defray all or part of the cost of a public improvement upon those who receive benefits above and beyond the benefits to the community at large. These are imposed primarily for financing such public improvements as streets, sewers, and parks, as well as irrigation, drainage, water-supply, and levee construction. Special assessments are levied against real estate.

General tax revenue (property assessments for the most part) and special assessments combined produced 19.6 percent of the total special district revenue in 1962. Of 192 special districts in Montana, 105 have powers of property taxation. Federal, state, and local transfers of revenue to special districts accounted for another 14.6 percent of district revenues in 1962. However, bonded indebtedness in anticipation of revenues from these other sources is widely employed by special districts. At the end of 1962 in Montana, special districts owed a total of \$19,375,000 of nonguaranteed indebtedness, and another \$458,000 guaranteed by full faith and credit.

Special districts, then, exist as a matter of expediency. Their existence, although sometimes justified on moralistic and "reformer" grounds, is really designed to achieve political independence from existing governmental authorities. In considering special districts, one must weigh the advantages cited against the problems attendant to an increasing multiplicity of governmental units. There is no particular virtue attached to having only a few governmental units, but there is a question which occurs when the public must deal with a number of widely dispersed governing bodies: How should public responsibility be fixed? For matters of convenience and simplicity the fewer governmental authorities the better. Specific disadvantages cited against the use of the special district device have been the following:

Disadvantages of special districts, it is argued, include the fact that the behind-the-scenes way in which they generally operate helps to make them especially profitable for lawyers, engineers, bankers, bonding houses, and salesmen of equipment, services, and real estate. They are often designed to meet short-range needs and not only do not consider more permanent solutions, but by taking the urgency out of the situation for at least a considerable portion of a community, serve to forestall efforts toward long-range, rational governmental organization.³

Moreover, if the intention of using special districts is to "eliminate political patronage" and assure professional administration, they have been less than successful. Frequently, special districts add to the cost of local government through inefficient utilization of equipment and personnel. It is also said:

They do not balance the various needs for services of a community, do not recognize the interdependence of various functions and are not usually provided with a method for coordinating their activities and budgets with those of the other governments in the area in which they exist.⁴

They are, in other words, virtually outside of the control of the state legislature. A well-designed special district, however, could escape the criticisms levied against it.

² As quoted in Advisory Commission on Intergovernmental Relations, *The Problem of Special Districts in American Government* (Washington, D.C.: United States Government Printing Office), May, 1964, p. 53.

³ Charles R. Adrian, *State and Local Governments* (New York: McGraw-Hill Book Co., Inc.) 1960, p. 232.

⁴ *Ibid.*

NUMBER AND TYPES OF DISTRICTS

Whatever the reasons, the use of the special district device is increasing in the United States. In 1942 there were only 8,300 such units in the United States, but there are over 18,000 today. The U.S. Census Bureau classification of special districts and their number in the United States and Montana is shown in Table 1. The first five types of districts all deal with natural resource functions. Thus one-third of the special districts in the United States perform natural resources activities while more than two-thirds of the special districts in Montana are in this field.

Table 1
Kinds and Number of Special Districts in the United States and Montana⁵

Kinds	United States	Number	Montana
Soil Conservation	2,461		57
Drainage	2,240		23
Irrigation, water conservation	781		50
Flood control	500		1
Other and composite natural resource programs	176		0
Fire protection	3,229		0
Urban water supply	1,502		1
Cemeteries	1,283		49
Housing and urban renewal	1,099		5
Sewage	937		0
School buildings	915		0
Highways	773		0
Parks and recreation	488		0
Hospitals	418		0
Libraries	349		0
Other single-function districts	862		1
Multiple-function districts	310		1
Total	18,323		192

Source: United States Bureau of the Census, *Census of Governments, Vol. I: 1962* (United States Government Printing Office, Washington, D.C.), 1963.

ESTABLISHMENT OF SPECIAL DISTRICTS

Special districts are established either by general or special laws. If a general enabling act is passed, any individuals or area meeting the stated qualifications may organize as a special district; special laws create a situation where only one district is created at a time.

Once the legislature authorizes the creation of a special district, whether by general or special act, further action must be taken by the residents of the area, local government, a state agency, or some combination of those mentioned. If a local unit of government is involved, an ordinance specifying the need for the district is often followed by a local referendum. Sometimes the initiative is by petition of the people themselves, and after the body petitioned holds a hearing, a referendum may be called. After the district is created, the governing body (in almost all cases a board or commission) is chosen, usually by popular election but sometimes by appointment.

⁵ Montana has some districts, such as those for fire protection, classified as "Subordinate Agencies" by the Bureau of the Census. These are excluded from the table.

Some characteristics of special districts, which make them resemble municipal corporations (though in legal terms considered quasi-municipal) are worth noting. They have perpetual succession. They may sue and be sued, make contracts, hold property and exercise whatever other powers have been conferred upon them by the state. It has also been said that they are substantially autonomous, defining autonomy as fiscal or administrative:

Fiscal independence is related to the power of the entity to determine its budget without review or detailed modification by other governments, including the power to fix tax rates or service charges, or to issue debt. Administrative independence is determined by such factors as popular election of the governing body, and nature of the governing body, that is, do its members come from more than one unit of general government, are the functions performed by the entity essentially different from those of its creating government unit and not subject to specification thereby.⁶

With this definition of fiscal and administrative autonomy there is undoubtedly great variance between districts within the meaning of "substantially autonomous."

MONTANA NATURAL RESOURCE SPECIAL DISTRICTS

In Montana, there are four types of single-function natural resource special districts: county water districts, drainage districts, soil and water conservation districts, and irrigation districts. County water districts can be created by the board of county commissioners after a petition of the voters in the area and a referendum. The governing board (consisting of 5 members elected at large plus an additional member from each municipality included in the district appointed by the mayor, and another member from any incorporated territory within the district appointed by the county commissioners) can incur bonded indebtedness and levy assessments on lands benefited by the district. It also has the power to fix the rates and charges for its services.

Drainage districts are created by the district court after a petition of landowners and a hearing. The elected board of commissioners can issue bonds and levy assessments. The soil and water conservation districts were created mainly to take advantage of the federal programs administered by the Soil Conservation Service of the U.S. Department of Agriculture. They are established by the State Soil Conservation Committee, again after a petition and referendum. An elected board of supervisors provides the governing authority, and they may levy assessments from landowners benefited by their activities.

Irrigation districts can be created by the district court after petition and hearing. The district's board of governors can levy taxes and issue bonds.

The situation in Montana is relatively simple. Throughout the United States, however, there are numerous kinds of natural resources districts. One author has identified 16 types.⁷

Probably because of the wide dispersion of single-purpose districts and the recognition that conservation of natural resources can best be handled as a composite problem, multiple purpose districts have come into being in the United States. Rather than concentrating upon one single aspect of a large question, the multiple purpose unit can deal with the problem as a totality.

A multifunction district requires its governing board to make judgments similar to those made by the governing bodies of general government, concerning future service for each function performed, and to establish priorities among its programs. As their functions increase, it may become difficult to distinguish them from units of general government. When this occurs, many of the so-called advantages, as well as disadvantages, of special districts may well be lost.⁸

⁶ Advisory Commission, *op. cit.*, p. 4.

⁷ Yang-Ch'Eng Shih, *American Water Resources Administration* (New York: Bookman Associates, Inc.), 1956, Vol. II.

⁸ Advisory Commission, *op. cit.*, p. 22.

In the water resources field, there are two types of multiple purpose districts: those where the district is engaged in several different single-purpose enterprises, and those engaged in one purpose with many facets. The former type includes certain metropolitan districts, public utility districts, and sanitary districts. For example, in Illinois under a 1919 act, sanitary districts with the single purpose of sewage disposal may become water districts with the single purpose of water supply when one of its constituent cities owns a waterworks. Sanitary districts in North Carolina may also engage in sewerage, water supply, mosquito control, fire prevention, and other enterprises. In 1919, Ohio authorized the organization of sanitary districts which may also regulate water pollution control and water supply. Thus one type of multiple purpose district works within the framework of existing districts and broadens the scope of their powers.

The other type of multiple purpose district is exemplified by river-conservancy or river-regulating districts. These exist for navigation improvement, flood control, water conservation, irrigation, and hydroelectric power development. In the states where these districts are organized (including Ohio, New York, Colorado, New Mexico, Nebraska, Minnesota, Oklahoma, Illinois, Texas, North Dakota, Utah, and Oregon) the district usually covers an entire watershed.

Water Conservancy Districts

Perhaps the best way of describing water conservancy districts is by utilizing the statement of the organizers of one such district:

In recent years a new type of legal entity called Conservancy Districts, has been used in several states in connection with water resources development projects. They supplement rather than replace other types of legal organizations that are established for water resource development such as irrigation districts and others. More and more the Conservancy District type of organization is being recognized as the answer to two of the perplexing problems encountered in the development of today's more complicated water resources projects, namely (1) the financing of the local share of more costly projects being constructed today and (2) providing the local administrative machinery through which the various interests in a multiple purpose water resources development can be represented.

One of the basic concepts on which Conservancy Districts are established is that the property of those who share in the benefits from a project indirectly be included in the district so that they too can participate in the cost of the project. To accomplish this, it becomes necessary to extend the boundaries of Conservancy Districts beyond the areas directly concerned with a project. The method used to determine the location of the boundaries of a district varies considerably in the several states in which Conservancy Districts are authorized. The type of project and the impact it will have on the economy of the region are important factors in making this determination.

The second basic concept in the organization of Conservancy Districts is that of obtaining revenue that the District must have to finance its operations through a general tax revenue levy rather than by special assessments such as is used by irrigation districts and similar organizations. Because limitation of such levies is usually restricted to a rather small amount this procedure appears justifiable and reasonable. Indirect benefits from an irrigation project or other type of water projects are said to equal from two to three times the direct benefits. The impact of such benefits on the economy of an area, which is the area included in the Conservancy District, surely will accrue to some degree to all inhabitants of that area. Consequently, they all should have the opportunity to contribute toward financing the water resources development from which the benefits accrue.⁹

⁹ "The Garrison Diversion Conservancy District," unpublished speech, n. d., p. 7.

In many states, the initial impetus for the creation of conservancy districts came from the federal government's passage of Public Law 566, the Watershed Protection and Flood Prevention Act. The districts emphasize flood prevention as their primary objective. However, their purposes usually include most of the following:

1. Preventing floods.
2. Regulating stream channels.
3. Reclaiming wet and overflowed lands.
4. Providing for water supply.
5. Providing for irrigation.
6. Regulating the flow of streams.
7. Diverting or eliminating water courses.
8. Developing and providing water for industrial requirements.
9. Developing and providing water for agricultural requirements.

To understand how these districts accomplish their purposes, the conservancy laws of several states will be examined.

OHIO

The Ohio Conservancy Act was passed on February 17, 1914 and was the first such law in the United States. In addition to the above powers, the districts may provide for the collection and disposal of sewage and other liquid wastes produced within the district, arrest erosion along the Ohio shoreline of Lake Erie, and maintain and operate parks, forests, and other recreational areas. The conservancy district is established by the court of common pleas of the county, or counties, where the proposed district is situated upon petition of a majority of the landowners (either in acreage or value). The court holds a hearing, if approved, the governing body (a board) is created. The preliminary expenses of the district are financed by an *ad valorem* property tax limited to 3 mills per dollar. The improvements are financed by special benefit assessments made on affected property and the board may also issue bonds in anticipation of revenue.

Acting under the authorization of this statute the Miami River Conservancy District was formed in 1917. Just 6 years later, 5 large flood retarding reservoirs had been constructed to protect Dayton, Hamilton and other municipalities from flood damage. The district had also made a number of channel improvements.

OKLAHOMA

Borrowing from the Ohio legislation, in 1923, Oklahoma passed almost identical statutes. Until the federal government passed Public Law 566, only 2 or 3 conservancy districts had been organized. Under Public Law 566, the Secretary of Agriculture may cooperate with states and local agencies in soil conservation projects including flood prevention and the conservation, development, utilization, and disposal of water. However, the local cooperating authority must have the power to maintain and operate the improvements. Soil conservation districts could be utilized as the cooperating agency, but they are somewhat limited by certain factors as specified in Public Law 566:

They (the cooperating agency) must acquire without cost to the Federal Government such land, easement and rights-of-way as will be needed in connection with the works of improvement. They must also provide the cost of advertising for contracts for construction, the cost of operating and maintaining such works of improvement, and are responsible for the land treatment measures.

The local soil conservation district has the necessary authority to cooperate with the Federal Government with the exception of having the authority of assessment and taxation to defray any expense the local people have in securing easements and rights-of-way and the cost of maintaining the struc-

tures after they are built. It is therefore necessary for the local organization to assure the Federal Government that they will fulfill their obligations and under the present Oklahoma law, a conservancy district is a legal entity that the people can form which has the authority to assess and tax and fulfill their part of the works of improvement.¹⁰

Thus, conservancy districts in Oklahoma have been organized mainly as cooperating agencies with the U.S. Department of Agriculture under Public Law 566.

The procedure in Oklahoma is to file a petition with the clerk of the supreme court if the proposed district includes more than one county, otherwise with the district court. The owners of at least 51 percent of the land area must sign the petition. The district court posts notice and holds a hearing on the petition, and the court may then declare the district formed. The judge appoints three directors for the district who must reside in and own land in the district. Directors serve until their successors are elected at a meeting of all the assessed landowners. Their terms of office are for 6 years.

Unlike Ohio, the board of directors may borrow but not assess property owners for preliminary work. Their borrowing is limited to 5 years and cannot exceed 25 cents per acre of all the lands in the project. The loan may be repaid from the assessments on the the benefited lands.

COLORADO

In 1937, for somewhat different reasons than was the case in Oklahoma, conservancy districts were authorized by the state legislature. Colorado was more concerned with its own self-interest. Under the appropriation plan of water rights, many neighboring states had appropriated water from streams which had their beginnings in Colorado, resulting in long, drawn-out litigation in the federal courts. Recurrent droughts had been devastating Colorado while millions of acre feet of water falling on watersheds in the state were flowing out in ten rivers. Irrigation districts existed in Colorado, but they were handicapped by an inability to obtain credit or the support of local landowners. The irrigation districts did not have the power of general taxation and therefore found it difficult to finance construction projects.¹¹

Certain features of the Colorado law are important. Although the district courts are made the establishing body in Colorado (as in Ohio and Oklahoma), the method of petitioning the court is different. To organize a district the minimum petitioned territory of *irrigated* land must be \$20,000,000 assessed valuation and the petition must be signed by not less than 1,500 irrigated land owners. An amendment to the act now authorizes the creation of a district with \$200,000 assessed valuation and a petition signed by 25% of the irrigated land owners and 5% of the non-irrigated land owners. Thus, the limitations for creating a district are somewhat different than in other states where a majority of the landowners (irrigated or not) must sign the petition. In addition, cities under 25,000 population may be included without their express permission. The hearing and organization procedures from this point on are similar to the procedures of Oklahoma.

The districts have limited powers of general taxation. They may assess a maximum of one-half mill prior to delivery of water from the project under construction, 1 mill thereafter, and an additional tax not to exceed 1 mill and up to 25 percent of all district revenues to meet defaults and deficiencies in annual installments on its contracts. They may make special assessments on land benefited by allotted water.

The powers of the board include contracting for water rights, disposal of water, to acquire stock in canal and water companies, to sell, lease and deliver water for municipal uses, domestic uses, irrigation, and manufacturing purposes and to fix the rates. They may not generate or distribute electric energy except as needed for their own operations. As of 1963, there were 32 districts organized and operating under the Colorado laws. The Colorado act has been adopted in almost identical form by Utah (1941) and Nebraska (1947).

¹⁰ Oklahoma State Soil Conservation Board, "Summary of Conservancy Act of Oklahoma," mimeo., April 7, 1964, p. 2.

¹¹ See William R. Kelley, "Water Conservancy Districts," *Rocky Mountain Law Review*, June, 1950, p. 432 ff.

NORTH DAKOTA

To illustrate a different type of organization, the Garrison Diversion Conservancy District (the only conservancy district in North Dakota), can be examined. This district was created in 1955 by special act of the state legislature. It includes 25 counties with a 1960 population of 374,872. Within the district are 20,330,680 acres with a total property valuation of \$825,265,349 (including personal property). The district was organized to divert water from the Missouri River to central and eastern North Dakota primarily for irrigation. It will also provide adequate stream flow for municipal and industrial uses, recreation facilities, expanded fish and wildlife conservation and propagation, and provide for flood control.

The governing body is composed of one director from each county appointed by the county commissioners. The directors are appointed for 3 year terms of office. Within these counties subdistricts such as irrigation districts and water conservation and flood control districts may be created. The powers of the board are much broader than in any of the smaller districts already considered:

1. To sue and be sued;
2. To exercise the power of eminent domain for the construction of facilities to secure the right of access to such works and to waters impounded for the project;
3. To accept funds, property and services of public and private sources for aiding and promoting the establishment and construction of the project;
4. To furnish assurances of cooperation as principal, guarantor, or either, to enter into contracts with the U.S. Government or public corporations of North Dakota;
5. To cooperate and contract with the State Water Conservation Commission and any municipality or subdivision in promoting the establishment and construction of the project;
6. To equip, maintain and operate an office and to appoint employees as necessary;
7. To appoint an executive committee from their number and vest that committee with such powers and duties as the board may desire;
8. To levy a tax of 1 mill on all taxable property in the district to pay the operating costs of the district and to accumulate a fund to pay the costs of the contracts it enters into with the United States. The district operating costs cannot exceed 10% of the total levy authorized. In other words 1/10 of a mill levy is authorized for the district operating costs and 9/10 for the costs of contracts the district may enter into.¹²

The costs of the project are borne by both the direct beneficiaries and those who benefit only indirectly. The benefits to be derived when the anticipated 1,000,000 acres of land are irrigated are:

1. Gross income will increase \$250,000,000.
2. Population will increase by 93,000.
3. There will be 20,000 new job opportunities.
4. There will be 3,600 new farms.
5. There will be 1,700 new businesses.¹³

Whether or not all of these benefits are realized, the advantages of a project of this magnitude rather than a multiplicity of smaller conservancy district projects cannot be overestimated.

¹² "Garrison Diversion Conservancy District," presented by Roy Holand, Chairman, mimeo., n. d., p. 5.

¹³ *Ibid.*, p. 7.

Chapter II

COMPARISON OF CONSERVANCY LEGISLATION IN SELECTED STATES

Organization

An examination of conservancy district legislation in the United States reveals four patterns. A number of states (including Oklahoma, Utah, and Wyoming) follow the practice of Ohio and Colorado. Ohio established the first conservancy districts in the United States in 1914. Colorado, in 1937, passed legislation patterned after that in Ohio but with adjustments undoubtedly intended to account for differences occurring west of the Mississippi River and the use of the prior appropriation doctrine of water rights. The practice in these states is to allow the lowest state court to act as the authorizing authority for the establishment and later supervision of the districts.

Another pattern, (utilized in Nebraska, Kansas, Washington, as well as some other states) is to place the burden of organization directly upon the people in a referendum election. Two states (South Dakota and North Dakota) use a different procedure. These two envision the entire state as a conservancy district. North Dakota does this by beginning with 22 counties and allowing other counties to join the district if they wish. South Dakota merely organizes the entire state as 1 district and allows for areas within the district to become subdistricts. The final pattern is also found in South Dakota where, as an alternative to organizing subdistricts, a Soil Conservation District, after a referendum election, may convert itself into what is essentially a conservancy district.

Although these patterns are discernible there are variances in certain matters between each and every state. A comparison of legislation in 9 states is shown in Table 2.

Table 2
Conservancy District Legislation

State	Name of District	Year of Legislation	Legal Reference
Oklahoma	Conservancy Districts	1923	Title 82, Ch. 5, Sec. 531 <i>et seq.</i>
Nebraska	Watershed Conservancy Districts (Subdistrict of a Soil Cons. Distr.)		2-1556 to 2-1565
Kansas	Watershed District	1953	24-1201 <i>et seq.</i>
Washington	Water Districts	Rev. 1964	Title 57.
Colorado	Water Conservancy District	1937	149-6-1 <i>et seq.</i>
Garrison (N. D.)	Garrison Diversion Conservancy District	1955	Ch. 348
Ohio	Conservancy Districts	1914	6101.01-6101.99
South Dakota	Watershed Districts	1957	Ch. 492.
South Dakota	Conservancy Districts	1959	Ch. 453.
Wyoming	Conservancy Districts	1959	41-77 <i>et seq.</i>

All states examined except North Dakota employ the petition device as the first step of organization. Counties may be added to the Garrison Diversion District upon application of the county commissioners. In the other states a wide range exists in the number required to sign the petition, but only Oklahoma requires a majority of landowners. Nebraska merely requires 10 percent of the taxpayers. Four states make special provisions when a municipality is to be included in the proposed district, and Colorado and Wyoming provide that when a city is to be included the chief executive may specify the maximum tax rate against its residents. Only Kansas *requires* a city election before a municipality is included in a district, but it may be assumed that in the other states such a procedure is permissible.

Only Colorado makes special provisions depending upon the size (in dollar figures) of the proposed district, but both Colorado and Wyoming specify what the value of each person's tract must be in order to qualify as a petitioner. The comparative data are shown in Tables 3 and 4.¹⁴

For the content of the petition, the only significant difference seems to be whether a legal description of the boundaries is to be included or merely a general description. Two states require that the number of directors be listed, and a third also requires that the proposed directors be named. The petition is usually submitted to the county auditor or the secretary of state, but in Kansas and Wyoming the state engineer is given responsibility for approving or disapproving the petition.

¹⁴ Table 3 appears on page 11 below. Table 4 appears on page 12 below.

Table 3
Petition Procedure

State	Authorizing Agent	Petition	
		Who Signs	Special Provision if Municipality Included
Oklahoma	District Court; if more than one county involved, Supreme Court.	51% of land owners owning 51% of land.	none
Nebraska	Board of Supervisors of Soil and Water Conservation District.	10% of resident taxpayers over 21.	none
Kansas	Referendum.	20% of landowners representing 25% of acreage.	City election and mayor's signature.
Washington	Referendum.	25% of record owners, mortgagors, guardians or executors.	none
Colorado	District Court.	1. If in excess of \$20 million irrigation lands, 1,500 owners of tracts over \$2,000 plus 500 owners of nonirrigated land.	1. Same . . . or plus 500 owners of land in city in excess of \$1,000.
		2. Under \$20 million, 25% of landowners with tracts over \$1,000 plus 5% nonirrigated land owners.	2. Same . . . or 5% of city land owners tracts over \$1,000. If city over 25,000 included, signature of chief executive with approval of legislative body. Can state maximum annual levy to be allowed.
Garrison (North Dakota)	Board of Directors.	Board of City Commissioners.	none
Ohio	Court of Common Pleas.	500 freeholders or majority or freeholders or owners of $\frac{1}{2}$ property in acreage or value.	Signature of authorized official.
South Dakota Watershed	Referendum.	25% of land owners or if 10 or less then 50%.	Signature of authorized official.
South Dakota Conservancy	State Legislature.	None, except for organizations of subdistricts, 25% owners of real property.	
Wyoming	District Court.	25% owners or entrymen having 25% of irrigated land each tract over \$100 plus 5% owners of 5% nonirrigated land tracts over \$100.	And/or 5% owners of land over \$100. Written consent of chief executive with approval of legislative body; may specify maximum rate of taxation.

Table 4
Included in the Petition

State	Inclusions
Oklahoma	not specified.
Nebraska	1. Legal description of boundaries. 2. Number of acres. 3. Reasons. 4. Name.
Kansas	1. Description of lands. 2. Statement of purposes. 3. Number of persons to constitute board. 4. Map. 5. Name. 6. Prayer for organization as nonprofit organization.
Washington	1. Object. 2. Boundaries.
Colorado	1. How properties benefited. 2. Purpose. 3. Assessed value. 4. Designation of districts. 5. Number of directors.
Garrison (North Dakota)	not specified.
Ohio	1. Proposed name. 2. Necessity. 3. General description of territory.
South Dakota Watershed	1. Name. 2. Need. 3. Purposes. 4. Number and names of managers. 5. List of landowners and acreage each owns. 6. Map. 7. Location of official place of business.
South Dakota Conservancy	none.
Wyoming	1. Name. 2. Benefits. 3. General description of purpose. 4. General description of territory. 5. Assessed value of irrigated lands. 6. Number of directors. 7. General description of divisions of the district.

After the petition is filed with the proper authorities, notice is given and a hearing is held. In 2 states the hearing is held by the local soil conservation district, in 4 by the local court, in 1 by the county commissioners, and in Kansas notice is followed by the election without a hearing. The provisions are shown in Table 5.

Table 5
Provisions for Notice and Hearing

State	Publication of Notice	Hearing	
		When Held	By Whom
Oklahoma	3 consecutive weeks.	Not less than 60 days from first publication.	Court.
Nebraska	2 consecutive weeks.	Within 30 days.	Board of Supervisors of Soil and Water Conservation District.
Kansas	3 consecutive weeks.	None.	
Washington	2 consecutive weeks.	No provision.	County Commissioners.
Colorado	Immediately after petition.	60-90 days.	District Court.
Garrison (N. D.)	None.	None.	
Ohio	3 consecutive weeks.	Within 60 days.	Court of Common Pleas.
South Dakota Watershed	3 consecutive weeks.	Within 10 days.	Soil Conservation District.
South Dakota Conservancy	None.	None.	
Wyoming	3 consecutive weeks.	60-90 days.	Court.

When the hearing is held all but 4 states leave the decision of whether to dismiss the petition to the discretion of the body holding the hearing as shown in Table 6.¹⁵ Colorado and Wyoming provide for the filing of a protest petition which, if filed, requires that the petition be dismissed. In Oklahoma and Nebraska it is merely provided that objections may be filed, and in Oklahoma if a majority object the petition is denied. In Nebraska, if 60 percent of the landowners signed the authorizing petition, the board may not dismiss. Otherwise dismissal is at their discretion. No provision is made for appealing an adverse decision of the hearing board except that Wyoming allows the state to initiate a *quo warranto* proceeding after the district is organized. Each state provides that after a certain length of time a petition may again be filed.

¹⁵ Table 6 appears on page 14, below.

Table 6
Hearing Procedure

State	Held By	Dissent Procedure	Grounds for Denial
Oklahoma	District Court.	Any landowner files his objections in writing.	If 50% of landowners owning 51% of land protest.
Nebraska	Soil and Water Conservation District.	Any landowner files his objections in writing.	If less than 60% of resident taxpayers have signed.
Kansas	None.	None.	None.
Washington	County Commissioners.	None.	None.
Colorado	District Court.	1. Over \$20 million district, petition by 1,000 or 15% of irrigated landowners whichever is lower plus \$2 million assessed valuation and equal number of non-irrigated or city landowners with \$1 million assessed valuation. 2. Between \$200,000 and \$20 million, petition of 20% of irrigated landowners with \$50,000 assessed valuation plus 5% of nonirrigated or city landowners with \$20,000.	If a protesting petition is filed, court must dismiss authorizing petition.
Garrison (N. D.)	None.	None.	None.
Ohio	Court of Common Pleas.	None.	None.
South Dakota Watershed	Soil Conservation District.	None.	None.
South Dakota Conservancy	None.	None.	None.
Wyoming	Court.	Protesting petition not less than 30 days prior to hearing; signed by 20% of owners or entrymen of irrigated land with tracts of \$100 plus 5% owners or entrymen of nonirrigated \$100 tracts.	Filing of protesting petition or a finding that material facts other than as stated in the petition.

In those 4 states where the organization of the conservancy district is based upon a referendum election, only Washington and South Dakota require an extraordinary majority. Only Washington specifies not only that 60 percent favor organization, but that they represent not fewer than 40 percent of the votes cast in the last preceding general election. Also in Washington, the proposition for levying up to 5 mills for planning and other initial expenses is placed before the voters at the same time. Table 7 summarizes the organization data.

Table 7
Organization of the District

State	Organizing Authority		Referendum Procedure		
	Court	Referendum	Who Votes	Percent	Special
Oklahoma	Yes	No			
Nebraska	No	Within 90 days	Taxpayers of legal age	Majority	Held only if less than 60% and more than 10% signed initial petition.
Kansas	No	Yes	Qualified voters	Majority	
Washington	No	Within 30 days	Qualified voters	60%—not less than 40% of votes cast in last general election.	Includes proposition to levy taxes up to 5 mills for 1 year.
Colorado	Yes	No			
Garrison (N. D.)	^a				
Ohio	Yes	No			
South Dakota Watershed	No	Yes	Landowners	60%	City officials may cast one vote on behalf of city as may other public corporations.
South Dakota Conservancy	No	No			
Wyoming	Yes	No			

^a The state legislature organized the district originally, but other counties may be added upon application of the board of county commissioners.

Governing Body

The creation of the district is followed by the appointment of a board of directors to administer the district. The selection of the first board is made by appointment for a relatively short period except in Washington. In 7 states, future directors are selected by an election, but in Ohio and Colorado the local court continues to fill vacancies on the boards. In the Garrison Diversion Conservancy District, each county board of commissioners appoints 1 director. The number of directors ranges from 3 to 33 in the various states and no special significance can be attached to any number. In South Dakota, the term of office is only 1 year, but Washington and Oklahoma set the term at 6 years. Comparative data is shown in Table 8.

Table 8
Governing Body

State	Selection		Who Votes	Number	Term of Office
	Initially	Later			
Oklahoma	Judge.	Elected	Assessed landowners	3	Until election, then 6 years staggered.
Nebraska	All supervisors of soil and water conservation district.	Elected	Taxpayers of voting age	5 minimum	4 years staggered.
Kansas	By steering election commission.	Elected	Qualified voters	3-33 uneven	3 years staggered.
Washington	Elected at organizing election.	Elected	Qualified voters	3	6 years staggered.
Colorado	Judge.	Same	No one	15 maximum	2 years.
Garrison (N. D.)	By county commissioners, one from each county.	Same	No one	1 from each county	3 years staggered.
Ohio	Judge.	Same	No one	3	5 years staggered.
South Dakota Watershed	By supervisors of soil conservation district.	Elected	Landowners	3 or 5	1 year.
South Dakota Conservancy	Water Resources Commission (Governor).		No one		
Wyoming	Judge.	Elected	Not specified	5-9	5 years staggered.

Table 9 shows that none of the states seem concerned about representing all water interests in the governing board selection. Evidently there is a recognition that conservation and beneficial use of a precious resource requires unified effort. Only South Dakota makes special provision to insure representation of special various interests and this is done through the use of an advisory committee. The other states merely require residence, land ownership, and age qualifications.

Table 9
Qualifications and Compensation of Governing Body

State	Qualifications				Compensation
	Resi- dence	Land- owner	Age	Other	
Oklahoma	Yes	Yes	No	Not more than 1 from each county.	Expenses including travel.
Nebraska	Yes	No	21	Taxpayer.	Expenses including travel.
Kansas	Yes	No	No	At least 1 from each subdistrict.	Expenses.
Washington	No	No	No	None.	Up to \$25 a day to \$600 annually and expenses.
Colorado	Yes	Yes	No	None.	Up to \$500 a year and travel expenses.
Garrison (N. D.)	Yes	No	21	None.	Same as city commissioners plus expenses.
Ohio	Yes 2 yrs.	Yes 2 yrs.	No	None.	Up to \$50 a day plus expenses.
South Dakota Watershed	No	Yes	No	No state or federal officer.	Expenses including travel.
South Dakota Conservancy	No	No	No	None.	Travel, subsistence and \$10 per diem.
Wyoming	Yes	Yes	No	None.	Up to \$600 plus travel expenses.

Size of Districts

Some interesting contrasts regarding size and location may be noted in Table 10. Colorado provides that no district with less than \$200,000 assessed land valuation may be established and, of course, the South Dakota Conservancy District and the Garrison Diversion District encompasses virtually the entire state. Only 1 state (Nebraska) requires that the land in the district be contiguous. Only Colorado distinguishes between the districts in organization matters depending upon the size of the district. Colorado also allows for the overlapping of districts but only 2 states specifically forbid it.

Table 10
Special Requirements for Establishing Conservancy Districts

State	Minimum Size	Contiguous Territory	Different Requirements for Different Size Districts	One District Overlapping Another
Oklahoma	None	Not specific	No	Not specific
Nebraska	None	Yes—must include all lands within the perimeter of the defined watershed.	No	No
Kansas	None	Not specific	No	Not specific
Washington	None	Not specific	No	Not specific
Colorado	\$200,000 assessed valuation.	No	Yes	Yes
Garrison (N. D.)	Began with 22 counties.	No	No	No
South Dakota Watershed	None	Yes	No	Not specific
South Dakota Conservancy	Entire state; then sub-districts.	Not specific	No	Not specific
Wyoming	None	No	No	Not specific

Several other matters pertaining to the organization of conservancy districts are relevant. Washington, Colorado, Ohio, South Dakota and Wyoming specifically provide for organization of subdistricts once a conservancy district is established. The procedure generally followed is the same for originally organizing the district, that is, by petition, notice, and hearing. One state (Ohio) specifies that a sub-district may be created only when a proposed improvement will affect only a part of the district. Since the South Dakota Conservancy District covers the entire state, the subdistricts are roughly equivalent to conservancy districts and subject to state supervision.

None of the 9 states examined provide a method for converting existing water-related subdistricts to conservancy districts, although the whole procedure for the establishment of South Dakota Watershed Districts is a conversion procedure for Soil Conservation Districts. Ohio provides that certain existing special districts may be included within a conservancy district.

Land may be added to a district in roughly the same manner as the original district was established in each of the states examined. The procedure is outlined in Table 11.¹⁶ This process of annexation is, in each instance, at the request of the affected landowner.

In excluding land from a conservancy district several important considerations are involved. In Washington for example, land may be excluded if the petitioners can show that water cannot be furnished at a reasonable cost. If an adverse decision is had, an election by a majority of the qualified voters decides the issue. In Nebraska, a competent engineer must determine that the land is outside of the drainage system before it can be excluded by action of the conservancy board. In Kansas, the chief engineer makes the final decision. In Ohio, the board of appraisers may decide that certain lands will not be benefited and recommend to the court that the land be excluded. The comparative details on procedures are shown in Table 12.¹⁷

¹⁶ Table 11 appears on page 19, below.

¹⁷ Table 12 appears on page 20, below.

Dissolution

Three of the 5 states making provisions for dissolving a district require that the district be in operation for a specified number of years before initiating the dissolution procedure. Kansas and Nebraska require that all contractual obligations of the district be met before dissolution. After a petition has been filed, and in some cases notice and hearing, a referendum election is held. Only South Dakota requires an extraordinary majority to decide the issue.

Table 11
Procedure for Adding Land

State	Land Added			
	Petition	Hearing	Election	Other
Washington	20% of registered voters or owners of majority acreage.	Yes, with notice.	Majority of landowners (qualified voters).	Or petition of 60% of owners of land or acreage; hearing; board action.
Nebraska	Taxpayers petition.	Yes, with notice.	No.	Decision by board.
Kansas	To secretary of state.	No provision.	No.	By secretary of state.
Colorado	25% of irrigated landowners with land over \$1,000 plus 5% of nonirrigated landowners or city owners with land over \$1,000.	By board or district court.	No.	By court order. Must dismiss if protesting petition signed by 20% of irrigated and 5% of nonirrigated landowners with land over \$1,000.
Oklahoma	Not specified.			
Garrison (N. D.)	By county commissioners.	No.	No.	By board of directors.
Ohio	Same as original organization procedures.	No.	No.	By court order.
South Dakota Watershed	Yes.	Yes.	Yes, same procedure as for original organization but must have approval of owner.	Minor adjustments may be made by managers without referendum.
South Dakota Conservancy	No provision.			
Wyoming	Yes.	By board.	Court order.	No.

Table 12
Procedure for Excluding Land

State	Land Excluded		
	Petition	Hearing	Decision
Washington	25% qualified electors.	With notice by board.	Must show water cannot be furnished at reasonable cost, then decision by county commission. If denial, then election; majority qualified voters.
Nebraska	Competent engineer determines if it is outside of drainage system.	With notice by board.	Board.
Kansas	Majority of board or majority of landowners after hearing.	No.	Chief engineer.
Colorado	Any landowner.	With notice by board.	Board.
Oklahoma	Not specific.		
Garrison (N. D.)	Resolution by board of county commissioners.	With notice.	Board resolution; can appeal denial to district court then supreme court.
Ohio	No.	No.	Can be recommended by board of appraisers, court order.
South Dakota Watershed	No.	No.	Cannot delete lands that have been subject to special assessment.
South Dakota Conservancy	No provision.		
Wyoming	To board.	By board.	Board action. If contract with United States Secretary of Interior, he must assent, then court order.

Colorado provides that a court-appointed receiver terminates the affairs of the district and, if necessary, levies a tax to meet outstanding obligations. A procedure is generally included for the disposition of surplus funds upon dissolution, as well as for payment of obligations. The procedure in eight states is shown in Table 13.¹⁸

¹⁸ Table 13 appears on page 21, below.

Table 13

Dissolution Procedure

State	Time Limit	Petition	Notice	Hearing	Referendum	Special Considerations
Washington	None	25% voters.	No	No	Yes, majority	None
Nebraska	5 years	25 taxpayers.	Yes	Yes	Yes, majority	All contractual obligations have been met.
Kansas	4 years	20% of landowners and % board members agree.			Yes, majority	No construction or obligation.
Colorado	None	And \$500 bond or resolution of % of board. Over \$20 million, % of owners who were required to sign original petition. Under \$20 million, same number as original petition.	Yes	Only if objections as to validity of petition.	Yes, majority	Court appoints receiver to wind up affairs. Levies taxes to pay obligations and costs.
Oklahoma	Not specified					
Garrison (N. D.)	No provision					
South Dakota Watershed	5 years	35% sign petition.	Yes	No	Yes, 67%	None.
South Dakota Conservancy	No provision					
Wyoming	No provision					

Powers of Conservancy Districts

For non-financial powers of conservancy districts, some states specify only a few such powers including the usual corporate powers, eminent domain, and the right to construct and maintain structures. The most comprehensive listing of powers and duties is found in the Ohio statutes. By listing these the usual kinds of powers can be illustrated. They include the power to:

1. Clean out, straighten, widen, alter, deepen, or change the course of terminus of any ditch, drain, sewer, river, watercourse, pond, lake, creek, or natural or artificial stream located in or out of said district;
2. Fill up any abandoned or altered ditch, drain, sewer, river, watercourse, pond, lake creek, or natural or artificial stream, and concentrate, divert, or divide the flow of water in or out of said district.
3. Construct, acquire, operate, and maintain main and lateral ditches, sewers, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, wells, intakes, pipelines, purification works, treatment and disposal works, pumping stations and siphons, and any other works and improvements deemed necessary to accomplish the purposes of the district or to construct, preserve, operate, or maintain such works in or out of said district;
4. Require the use of the improvements constructed or acquired by district for the purpose of water supply or the collection and disposal of sewage and other liquid wastes by the public corporations and persons within the district for which such improvements were installed;
5. Afforest lands owned by the district;
6. Install improvements on lands owned or controlled by the district for the proper maintenance thereof, or for the purpose of preventing or minimizing damage to the works and improvements of the district;
7. Construct connections to the works of the district for the delivery of a water supply therefrom or for the delivery of sewage and other liquid wastes thereto;
8. Construct or enlarge any bridges that may be needed in or out of said district;
9. Construct or elevate roadways and streets;
10. Construct any of said works and improvements across, through or over any public highway, canal, railroad right-of-way, track, grade, fill, cut, or other public or private property;
11. Remove or change the location of any fence, building, railroad, canal, or other structure or improvement located in or out of said district, but if it is not feasible or economical to move any building, structure, or improvement situated in or upon lands required by the district and if the cost to the district is determined by the board to be less than that of purchase or condemnation, the board may acquire land and construct, acquire, or install, therein or upon buildings, structure, or improvements, similar in purpose, to be exchanged for the aforementioned buildings, structures, or improvements under contracts entered into between the owner thereof and the district;
12. Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease, use, and sell real and personal property, and any easement, riparian right, railroad right-of-way, canal, cemetery, sluice, reservoir, holding basin, milldam, water power, wharf, or franchise in or out of said district for right of way, holding basin, location or protection of works and improvements, relocation of communities and of buildings, structures, and improvements situated on lands required by the district, or for any other necessary purpose, or for obtaining or storing materials to be used in constructing and maintaining said works and improvements;
13. Replat or subdivide land, open new roads, streets, and alleys, or change the course of an existing one, and install therein improvements to replace those in the former roads, streets, or alleys;

14. Procure insurance against loss to the district by reason of damage to its properties, works, or improvements resulting from fire, theft, accident, or other casualty or by reason of the liability of the district for any damages to persons or property occurring in the operation of the works and improvements of the district or the conduct of its activities;
15. Do all things necessary or incident to the fulfillment of the purposes for which the district is established;
16. Enter upon lands within or without the district to make surveys and examinations to accomplish the necessary preliminary purposes of the district, or to have access to the work. They shall be liable, however, for actual damage done, but no unnecessary damage shall be done;
17. Perpetual existence;
18. Sue and be sued;
19. Establish and maintain stream gauges, rain gauges, and a flood warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examination of rainfall and flood conditions, stream flow, and other scientific and engineering subjects as are necessary and proper for the purposes of the district;
20. Enter into contracts or other arrangements with the United States government or any department thereof, with persons, railroads, or other corporations, with public corporations, and with the state government of this or other states, with drainage, conservation, conservancy, sewer, park, or other improvement districts, in this or other states, for cooperation or assistance in constructing, maintaining, using, and operating the works of the district, the waters thereof, or the parks, parkways, forests, and recreational facilities thereof, or in minimizing or preventing damage to the properties, works, and improvements of the district from soil erosion, or for making surveys and investigations or reports thereon.¹⁹

All of the states examined grant the power of eminent domain to the local districts, and all of the states also grant the conservancy district's governing board the power to make rules.

Other powers have been granted to conservancy districts. Colorado and Wyoming provide that the districts may invest their surplus money. Nebraska provides that the districts may call upon the county attorney or the attorney general for legal advice. Several states provide that the district may collect reasonable fees, rentals, tolls, and charges for the use of their facilities. All states provide that necessary personnel may be employed. Several western states allow the district to allocate and reallocate the use of water.

Finances

The fiscal powers of all the districts include the power to issue bonds and borrow money, to tax, and, in most cases, to make special assessments. The important considerations here are the limitations placed upon these powers by the state legislatures. Table 14 compares the limitations placed upon the various districts' bonding powers.²⁰ Colorado and Wyoming provide that bonds cannot be issued for less than 10 years nor more than 50 years. Other states specify the maximum number of years. Several states make different provisions depending upon the kinds of bond. Various kinds of dollar limitations are also found, and most states specify 6 percent as the maximum allowable interest. In addition, provisions for a sinking fund are required in several states. Ohio is the only state examined which does not require a referendum election before bonds are issued.

In Ohio conservancy districts are required to levy an annual property tax. After a limitation of 3/10 of one mill for the establishment of a preliminary fund, Ohio appears to have no limitation upon the amount that may be levied. Washington allows a levy of up to 40 mills. Colorado distinguishes between the size of the district and between the time prior to the delivery of water and after the delivery of water to determine the monetary limitation. The limitations are listed in Table 15.²¹

In most cases, county officials are responsible for the collection of taxes for the district. In Ohio, each district has its own treasurer responsible for all fiscal matters, including the collection of taxes.

¹⁹ Ohio Rev. Code, Ch. 6101, *passim*.

²⁰ Table 14 appears on page 24, below.

²¹ Table 15 appears on page 25, below.

Table 14

Bonding Powers

State	Kinds of Bonds	Time	Limitations		Retirement Provisions
			Monetary	Other	
Oklahoma	Interim	5 years	25¢/acre,	District court must approve.	None specified.
	Other	30 years	90% of unpaid assessment.	Election, 60% approve.	None specified.
Nebraska	Not specified	None	5% of assessed valuation.		Not more than 5% interest.
Kansas	Not specified	20 years	10% of assessed valuation.	Notice, hearing and election.	20 annual installments. Not more than 6% interest.
Washington	General obligation	20 years	None.	Election, 3/5 of voters constituting 40% of votes cast in preceding general election.	Serial bonds, not more than 6% interest.
	Revenue	None	None.	Election, majority vote.	Bearer bonds; special fund, not more than 6% interest.
Colorado	Bearer	10-50 years	None.	Election by qualified taxpayers, majority.	Sinking fund; 6% interest.
Garrison (N. D.)	Not specified				
Ohio	Improvement	10 years	½ of 1% of all taxable property.		Bond retirement fund; 6% interest.
	Revenue	40 years	None.		6% interest; bond retirement fund.
	Anticipatory		Up to 90% of total amount of unpaid assessment.		6½ interest.
South Dakota	Not specified	None			
South Dakota Conservancy	None				
Wyoming	Not specified	10-50 years	None.	Election by qualified electors who paid taxes in preceding year, majority.	6% interest; cannot be sold at less than par and accrued interest.

Table 15
Taxing Power Limitations

State	Notice, Hearing and Election	Monetary Limitation	Collection Agent
Oklahoma	No hearing, election called by board, 60% majority.	Amount for bonds plus 1% for maintenance, plus 25 cents per acre.	County treasurer.
Nebraska	No.	2 mills of assessed valuation except intangible property.	
Kansas	Yes, and petition signed by 20% of landowners.	No.	Not specified
Washington		40 mills plus 2 mills where district maintains fire department.	County treasurer.
Colorado	Only if levy is to be raised from original levy.	1. District over \$20 million, 1 mill prior to and 2 mills after delivery of water. 2. District under \$20 million, ½ mill prior to and 2 mills after delivery of water. 3. District over \$50 million, ½ mill prior to and 1 mill after delivery of water.	
Garrison (N. D.)	No.	1 mill annually, none.	County treasurer.
Ohio	No, court approval.	3/10 of 1 mill for preliminary fund, then no limitation.	District treasurer.
South Dakota Watershed	Yes, 60% of landowners.	1 mill for 2 year periods but does not apply to assessments required to meet payments of district bonds.	County auditor.
South Dakota Conservancy	No.	1/10 of 1 mill for salaries, mileage, etc. of board.	County and deposited with state treasurer.
Wyoming	No.	½ mill prior to and 1 mill after delivery of water.	Board of county commissioners.

The states uniformly provide that taxes and assessments create a lien upon the property. The Colorado provision is typical:

All taxes and assessments made under this article together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, until paid, shall constitute a perpetual lien on a parity with the tax lien of general, state, county, city, town or school taxes and no sale of such property to enforce any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien of such taxes and assessments.²²

²² Colo. Stat. Anno. 49-6-23.

Provision is also made for the sale of property for delinquencies in payment:

If the taxes or assessments levied are not paid, then the real property shall be sold at the regular tax sale for the payment of said taxes and assessments, interest and penalties, in the manner provided by the statutes of the state of Colorado for selling property for payment of general taxes.²³

Special assessments may be levied upon property which is specially benefited from a conservancy project. The limitations upon these are found in Table 16. These provisions are not well detailed in the states examined, but Colorado and Wyoming indicate that the property to be assessed is that to which water has been allocated. Thus, the assessment is an addition to the rate per acre foot of water sold in order to pay for additional construction, operation and maintenance.

Table 16
Limitations on Special Assessments

State	Financial Limitations	Notice, Hearing and Election	Other
Oklahoma	Cost of plans plus 10% for contingencies.		Notice and hearing by court.
Nebraska	Power not specified.		
Kansas	2 mills for a general fund; other sufficient to pay off improvement bonds.	No.	Not exceed 20 years. Appraisal by 3 disinterested appraisers.
Washington		No.	Not exceed 20 years.
Colorado	By rate/acre foot of water sold; annual levy for operating and maintenance.	No, petition.	
Garrison (N. D.)	Power not specific.		
Ohio	None specified.	No.	Approval of court.
South Dakota Watershed	None.	Yes, 60% of landowners to be assessed.	
South Dakota Conservancy	Power not specific.		
Wyoming	Municipal property and irrigation districts and land for which water is allocated for irrigation, none.	No.	Determine annually money needed for operation and maintenance and fixes charge (tax rate).

The preceding account merely highlights the basic provisions of conservancy district legislation in the selected states. There are numerous special provisions such as procedures for including street lighting systems into the district plan, condemning cemeteries, establishing fire departments, and others. However, many of these provisions are obviously of special local concern. Other detailed provisions, such as bonding requirements, are highly technical and do not lend themselves easily to summarization. This account should, however, provide a general account of the major differences between the four basic kinds of conservancy legislation in existence in the United States.

²³ Colo. Stat. Anno. 149-6-24.

Chapter III

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Senate Joint Resolution No. 13 stated that a study of conservancy districts and the preparation of enabling legislation under which conservancy districts could be established in Montana is needed and desirable. In the conduct of this study, the Council proceeded on the assumptions that: (1) Montana can insure adequate future supplies of water only by establishing rights to that water through beneficial use; (2) because of increasing demands for water, it is urgent that Montana establish rights to water as quickly as possible; (3) there has been little state and local development of water resources during the past ten years in Montana, and a major reason for this lack of development appears to be that single purpose projects (such as those constructed by irrigation, drainage, county water, and soil and water conservation districts) do not permit adequate financing; and (4) one promising means of encouraging water development appears to be the authorization of multiple purpose resource development districts. The Council has no reason to question the validity of those assumptions.

The Council concludes that legislation authorizing multiple purpose resource development districts is desirable. These districts should be organized at the request of persons who will benefit from them, and the legislation should: (1) allow maximum flexibility in adapting development to the unique needs of local areas; (2) vest a maximum amount of discretion in local officials; (3) provide some means of coordinating development with existing government entities; and (4) allow districts to utilize the technical assistance of state and federal agencies in the development of water resources without infringing upon the authority of local officials. The Council further concludes that these purposes should not be accomplished by amending present laws pertaining to special districts such as those for irrigation, drainage, county water, and soil and water conservation for several reasons. First, these districts were created to accomplish a single major purpose—provide water for irrigation, drain land for agriculture, conserve land resources, and the like. Second, these laws do not allow all persons who benefit from the development of water resources to contribute to the costs of that development, nor recognize all beneficial uses of water. Thus financing provisions of present laws are not adequate for development which considers all beneficial uses of water. Third, expanding the scope of authority for presently authorized special districts might adversely affect beneficial programs conducted by those districts.

Recommendations

To encourage the development of water resources, the Council recommends adoption of new legislation to authorize multiple purpose development districts that would recognize all beneficial uses of water and allocate the costs of projects among all parties receiving benefits. A proposed bill for this purpose appears in the Appendix to this report.

Under the provisions of the proposed bill, multiple purpose districts could be organized for any beneficial purpose including flood control, regulation of streams, improvement or reclamation of wet lands, recreation, conservation of water resources and related lands including fish and wildlife, or for irrigation, industrial development, municipal or domestic water supply, and the watering of livestock.

The organizational procedure in the proposed bill vests discretion and responsibility in the residents of the area where a district will be formed. The initial step is for interested persons (a number is not specified) to submit a request to the State Water Conservation Board asking for a preliminary survey of the feasibility of a district. The request must describe the area to be included in the district, purposes of the district, and the types of works contemplated.

Within 10 days after receipt of a request, the Water Board must acknowledge it and the preliminary survey must be completed within 60 days. A report is then sent to the petitioners, local Soil and Water Conservation District, Fish and Game Commission, State Board of Health, and other state and federal agencies concerned with water resource development. Because the Water Board has compiled a vast amount of data on possible projects in the state, the preliminary survey should not entail substantial costs to the Board.

Upon receipt of the preliminary survey, the petitioners may request a detailed study of the feasibility of the district. The detailed study request may be submitted to any state or federal agency, or the petitioners may retain private consultants. If desired, the request may be forwarded through the Board of Supervisors of the local Soil and Water Conservation District. Copies of the detailed study are furnished to the same persons who receive copies of the preliminary survey.

If the detailed study shows that a district is feasible, the petitioners may submit a request for organization to the district court. The petition must contain data on the area to be included in the district, the estimated cost of works and means of financing, and be signed by a specified number of prospective electors. The petition must also suggest interests which might be represented on the governing board of the district. A district may not be formed unless it contains at least \$100,000 taxable valuation of property.

The court must hold a hearing on the request for organization of a district, and upon a favorable finding, order an election on the question. If 60 percent of the eligible electors voting favor organization, the court orders organization. Copies of the order are filed with the Secretary of State, Water Board, and clerk and recorder of each county containing a portion of the district.

If a district is organized, the governing body is composed of 3 to 11 directors appointed by the court for 3 year terms. The appointment of directors by the court allows representation of the various interests, which might contribute to the costs of the district, in proportion to the financial contribution of each. Interests which can be represented on the board include domestic water supply, fish and game, flood control, industry, irrigation, livestock water supply, municipal water supply, pollution abatement, and recreation.

The proposed bill vests broad authority in the board of directors. On behalf of the district, the directors may acquire property, make charges for water services rendered, make an annual assessment of up to 2 mills for operations and maintenance on all taxable property in the district, issue bonds, make an assessment of not more than 3 mills (in addition to the 2 mill assessment for operations and maintenance) to finance bonds issued, contract with the federal government, borrow money, mortgage property owned by the district, and employ necessary personnel. Although the district has the right of eminent domain, this right may be exercised for fish, wildlife, and recreation only at a project site. The directors must hold an annual budget hearing, set assessments, file an annual report with the Water Board, and have their financial records examined annually by the State Examiner.

If it is necessary to issue bonds to finance works, the directors must pass a resolution stating the purposes of the bonds, a description of the property in the district to be benefited by the works contemplated, amount and term of the bonds, maximum interest rate, and method of repaying the bonds. If approved by 60 percent of the electors voting at an election on the question, the bonds may be issued. Refunding bonds may be issued in the same way as other bonds.

Procedures are provided for the annexation of property to a district, the merger of two or more districts, and the exclusion of property not benefited by the district's works from a district. A dissolution procedure is also provided in case a district is not successful. However, dissolution cannot be completed until all debts and obligations are paid. If a district is inactive for 1 year or more, any elector may present a petition asking for dissolution to the court.

APPENDIX

_____ BILL NO. _____

Introduced by _____

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE CONSERVATION AND DEVELOPMENT OF WATER AND LAND RESOURCES OF MONTANA THROUGH THE CREATION OF CONSERVANCY DISTRICTS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. To provide for the conservation and development of the water and land resources of the state of Montana, conserve Montana's water for utilization for beneficial purposes within the state, and provide for the greatest beneficial use of water within this state, the organization of conservancy districts and the construction of works as defined by the act are a public use and will:

- (1) be essentially for the public benefit and advantage of the people of Montana;
- (2) benefit all industries of the state;
- (3) encourage economic growth;
- (4) indirectly benefit the state by increasing property valuations;
- (5) directly benefit municipalities by providing adequate supplies of water for domestic uses;
- (6) directly benefit lands irrigated or drained by works constructed;
- (7) directly benefit lands now irrigated by stabilizing the flow of water in streams and by increasing the flow and return flow of water to those streams;
- (8) enhance fish and wildlife habitat;
- (9) improve the recreational facilities; and
- (10) promote the comfort, safety, and welfare of the people of Montana.

Section 2. The purpose of this act is to enable the formation of conservancy districts, comprised of area in one or more counties to promote the following purposes:

- (1) prevent and control floods, erosion and sedimentation;
- (2) provide for regulation of stream flows and lake levels;
- (3) improve drainage and reclaim wet or overflowed lands;
- (4) promote recreation;
- (5) develop and conserve water resources and related lands, forest, fish and wildlife resources;
- (6) control and correct pollution;
- (7) further provide for the conservation, development, and utilization of land and water for beneficial uses including, but not limited to, domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.

Section 3. As used in this act, unless the context clearly indicates otherwise:

- (1) "District" means a conservancy district, which is a public corporation and political subdivision of the state.
- (2) "Directors" means the board of directors of a conservancy district.
- (3) "Elector" means a person qualified to vote under Section 24 of this act.
- (4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

- (5) "Person" means a natural person; firm; partnership; association; public or private corporation, including the state of Montana or the United States; foundation; state agency or institution; county; municipality; district or other political subdivision of the state; federal agency or bureau; or any other legal entity.
- (6) "Water board" means the State Water Conservation Board.
- (7) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.
- (8) "Works" means all property, rights, easements, franchises, and other facilities including, but not limited to, land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, water-works systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.
- (9) "Cost of works" means the cost of construction, acquisition, improvement, extension and development of works, including financing charges, interest and professional services.
- (10) "Petitioners" means any persons making a request for the organization of a conservancy district.
- (11) "Notice" means publication at least once each week for three (3) consecutive weeks in a newspaper published in each county, or, if no newspaper is published in a county, a newspaper of general circulation in the county, or counties in which a district is or will be located. The last published notice shall appear not less than five (5) days prior to any hearing or election held under this act.
- (12) The person or persons who appear as owners of record of the legal title to real property according to the county records are "owners" under this act whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner nor shall he affect the previous title for purposes of this act.
- (13) "Pollution" means the alteration of the properties of state water which is detrimental to their most beneficial use.

Section 4. (1) To request a preliminary survey for a proposed conservancy district, the petitioners shall present a written request to the water board.

- (2) The request shall:
 - (a) generally describe the proposed boundaries of the district;
 - (b) specify the purpose or purposes of the district;
 - (c) list the works contemplated.

Section 5. Sooner than eleven (11) days after the request is received, the water board shall acknowledge the request and shall itself, or through cooperating agencies, or together with cooperating agencies:

- (1) consult with persons who may participate in the proposed project;
- (2) conduct a preliminary survey of the proposed district;
- (3) estimate costs of works, maintenance, and operations;
- (4) determine sources of funds for financing;
- (5) reach a tentative decision on the feasibility of the proposed district sooner than sixty-one (61) days after receipt of the request;
- (6) send a report of the preliminary survey to the board of supervisors, petitioners, fish and game commission, state soil conservation committee, state board of health, and other affected state and federal water resource agencies for their comments.

Section 6. Upon receipt of the preliminary survey report, the petitioners may submit a request for a detailed study through the board of supervisors or directly to any state, federal, private agency, or combination thereof.

Section 7. Upon receipt of the detailed survey, the petitioners shall send copies of the survey to the fish and game commission, state soil conservation committee, water board, state board of health, and other affected state and federal water resource agencies.

Section 8. If the detailed study shows that a district is feasible, the procedure for organization is:

- (1) a petition requesting organization of the district shall be filed with the court;
- (2) the petition shall:
 - (a) state the name of the proposed district;
 - (b) give a description of the boundaries of the proposed district sufficient to enable a person to ascertain whether his property is in the proposed district, which need not consist of contiguous land;
 - (c) describe the purpose of the district;
 - (d) describe the works;
 - (e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;
 - (f) list the taxable valuation of real property in the proposed district, which must be one hundred thousand dollars (\$100,000) or more;
 - (g) describe the means of repaying capital costs;
 - (h) propose the persons who should be represented and the number of directors.
- (3) The petition shall be signed by not fewer than ten percent (10%) or five hundred (500) whichever is the lesser, of the prospective electors outside limits of an incorporated municipality, and not fewer than five percent (5%) or one hundred (100), whichever is the lesser, of the prospective electors within an incorporated municipality.

Section 9. (1) Upon receipt of a petition for organization of a district, the court shall give notice and hold a hearing on the petition and upon a favorable finding shall:

- (a) alter the boundaries of the proposed district as necessary and desirable;
 - (b) make an order fixing the time and place of an organizing election;
 - (c) give notice of an election in the way provided in Section 3 (11);
 - (d) provide for election judges and fix their compensation;
 - (e) fix the polling place or places as necessary;
 - (f) order the county clerk to provide poll books, ballots, poll lists and other necessary election supplies;
 - (g) provide for canvassing the results;
 - (h) declare the results;
 - (i) order and decree the district organized if sixty percent (60%) of the eligible electors voting favor organization.
- (2) This act shall not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation, and questions of right growing out of, or in any way connected with a priority of appropriation, are expressly excluded from this act and shall be determined as otherwise provided by the laws of Montana.

Section 10. Sooner than thirty-one (31) days after the district has been decreed organized, the clerk of court shall transmit to the secretary of state, water board, and to the county clerk and recorder of each of the counties having lands in the district, copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed shall collect filing fees as provided by law.

Section 11. If organized, the district shall reimburse the county or counties for the expenses incurred in the organizing election.

Section 12. If a district is organized, the court shall:

- (1) establish by court order the number of directors who will administer the district, appoint directors who must be electors of the district, and fix the compensation of directors. The number of directors shall not be less than three (3) nor more than eleven (11) and shall be arrived at by determining, insofar as practicable, the persons and purposes to be served by the district and the probable financial contribution of the persons to the district. Persons who may be represented by a director or directors may include, but are not limited to, those interested in domestic water supply, fish and game, flood control, industry, irrigation, livestock water supply, municipal water supply, pollution abatement, and recreation. Upon a verified petition filed by a majority of the incumbent directors and good cause shown, the court may enlarge the representation and number of directors, but the total number of directors shall not exceed eleven (11).
- (2) fix the terms of office so that approximately one third (1/3) of the directors first appointed serve for one (1) year, approximately one third (1/3) of the directors first appointed serve for two (2) years, and the remainder of the directors first appointed serve for three (3) years. All succeeding terms shall be for three (3) years. Unless excused for good cause, a director who misses three (3) consecutive regular meetings has vacated his position;
- (3) fill all vacancies on the board by appointment;
- (4) specify a date for the annual meeting of the directors;
- (5) specify the amount and form of a corporate surety bond which each director shall furnish at the expense of the district conditioned for his faithful performance of duties as a director.

Section 13. (1) The directors shall select from among themselves a chairman, vice-chairman, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings. All official acts of the directors shall be entered in a book of minutes to be kept by the secretary.

- (2) The directors shall establish times for regular meetings. They may hold special meetings upon the call of the chairman or any two (2) members, and upon at least three (3) days notice of the time, place, and purpose of the meeting.

Section 14. On behalf of the district, the directors may:

- (1) adopt an official seal;
- (2) sue and be sued;
- (3) adopt rules to promote and encourage water recreation, including requirements concerning public access areas and facilities, and rules respecting the use of reservoirs and waters, picnic sites, and other recreational areas developed and operated by the district. Rules adopted shall be filed with the secretary of the directors and shall be available to any interested party upon reasonable request;
- (4) enter private property for the purpose of making surveys, provided that just compensation for actual damages is made;
- (5) provide for their reimbursement for actual expenses;
- (6) appropriate water and initiate or participate in the adjudication of streams;
- (7) acquire, undertake, construct, develop, improve, maintain, and operate works and all incidental facilities;
- (8) acquire by purchase, exchange, gift, lease, grant, devise, or otherwise, lands, water, water rights, or rights-of-way as necessary for the execution of any authorized function of the district. Title to all property (including water rights) shall be in the name of the district;
- (9) merge with other special districts, subject to approval of a majority of the qualified electors voting on the proposition in each of the districts proposing to merge;
- (10) hold and dispose of property as necessary or convenient in the performance of the functions of the district;

- (11) call upon the county attorney or attorney general for such legal services as the district may require;
- (12) withhold the delivery of water upon which there are any defaults or delinquencies of payment;
- (13) upon continued default or delinquency of payments, declare forfeited the rights to use water, resell and otherwise dispose of such forfeited water;
- (14) borrow money and incur indebtedness and issue bonds to finance works as provided by this act;
- (15) refund bonded indebtedness incurred by the district as provided by this act;
- (16) after a hearing held in accordance with section 17 of this act, make assessments sufficient to meet the budgetary requirements for the coming year;
- (17) contract for service, for water furnished, or for the sale of water with any person;
- (18) fix and revise from time to time and collect rates, fees, and other charges for the use of or for the services, facilities, or water furnished by, any project or system operated by the district to any person;
- (19) allocate or reallocate water to users, either within or without the district;
- (20) in the performance of its functions, cooperate with, accept grants, loans, and other assistance from, act as agent for, and enter into agreements with any and all federal agencies, and exercise all necessary or convenient powers in connection therewith;
- (21) enter into any obligation or contract with an agency of the federal government for the construction, operation, and maintenance of works for the delivery and distribution of water; or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands under the provisions of the federal reclamation act and rules established under that act; or contract with an agency of the federal government for a water supply under any federal act providing for or permitting such a contract. However, the action must be approved by a majority of the electors voting at an election held as provided in Section 25. If a contract is made with an agency of the federal government, the directors may deposit bonds of the district with the United States at ninety percent (90%) of their par value, to the amount to be paid by the district to the United States under any contract, the interest on the bonds of the district to be applied as specified by the contract. If bonds of the district are deposited with the United States, it is the duty of the directors to make an assessment sufficient to meet all payments accruing under the terms of any contract with the United States;
- (22) accept appointment of the district as fiscal agent for the United States or authorization of the district to make collections of moneys for or on behalf of the United States in connection with any federal reclamation projects and the district is authorized to act and to assume the duties and liabilities incident to this action. However, the action must be approved by a majority of the electors voting at an election held as provided in Section 25. The directors may do all things required by federal statutes and rules and require prompt payment of all charges as a prerequisite to water service;
- (23) in addition to all voted indebtedness, borrow money as necessary but the amount shall not at any one time exceed five percent (5%) of the taxable valuation of real property in the district;
- (24) mortgage property owned by the district if the terms of the mortgage are not inconsistent with the provisions of a resolution authorizing the sale of bonds;
- (25) use any surplus funds to purchase outstanding bonds;
- (26) make contracts incidental to the performance of the district's functions, and employ and fix the compensation of employees, agents or consultants as are deemed necessary, including but not limited to, a manager, attorneys, accountants, engineers, construction and financial experts;
- (27) but, nothing in this act provided shall be construed to grant to the district or board the power to generate, distribute or sell electric energy except for the operation of the works and facilities of the district;

- (28) cooperate with soil and water conservation districts to obtain agreements to carry out soil conservation measures and proper farm plans from owners of not less than fifty percent (50%) of the lands situated in the drainage area above each retention reservoir to be installed with federal assistance.

Section 15. A conservancy district organized under this act may act, by itself or in conjunction with others, as a sponsoring organization to participate in all federal programs including, but not limited to, the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the Federal Water Project Recreation Act of 1965 (79 Stat. 213), the Federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts.

Section 16. (1) The directors shall, as far as possible, fix charges for water furnished that will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by the district, and pay the interest and principal of bonded debt.

- (2) If revenues are not sufficient, the directors may make an assessment of not more than two (2) mills on all taxable real property in the district for expenses other than interest and principal on bonded indebtedness.
- (3) In addition to the assessment authorized by subsection (2), the directors may annually make an assessment of up to three (3) mills on the taxable valuation of all taxable real property in the district to pay interest and principal on bonded indebtedness. Except as provided in Section 30, approval of the electors is not necessary.

Section 17. (1) The directors shall, prior to the first Monday in May of each year, give notice as provided in Section 3 (11) of this act of the intention to hold a public budget hearing. The notice shall include the date, time, place, and general agenda.

- (2) At the hearing, the directors shall:
- (a) review the present budget;
 - (b) present the budget for the next year;
 - (c) hear and consider protests from any elector;
 - (d) adopt the budget for the next year;
 - (e) set the assessment for the next year.

Section 18. (1) Before the second Monday in July of each year, the directors shall provide the county assessor and treasurer with:

- (a) a budget for the current fiscal year;
 - (b) a statement of the amount of special assessments to be collected for the district;
 - (c) a listing of all real property within the district.
- (2) If the district is located in more than one (1) county, the directors shall provide this information to each of the county assessors and treasurers.

Section 19. (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

- (2) If the district is located in more than one county, all assessments collected shall be deposited with the treasurer of the county in which the assessments were collected.
- (3) The board of directors may direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank insured by the Federal Deposit Insurance Corporation or in direct obligations of the United States government payable within one hundred eighty (180) days from the time of investment. All interest collected on the deposits or investments shall be credited to the fund from which the money was withdrawn. However, five percent (5%) of the interest shall be deposited in the general fund of the county.

Section 20. (1) Assessments for payments of bonded indebtedness shall be levied on the real property benefited as stated by the directors in the resolution declaring the necessity to issue bonds.

- (2) Assessments for purposes other than payment of bonded indebtedness shall be levied on all real property in the district.
- (3) If assessments are levied for the payment of bonded indebtedness for the benefit of certain real property in the district as stated in the resolution declaring the necessity to issue bonds, the assessments are a lien upon each lot or parcel benefited to the extent of the assessment on each lot or parcel.
- (4) If assessments are levied for purposes other than the payment of bonded indebtedness, the assessments are a lien upon each lot or parcel within the district to the extent of the assessment upon each lot or parcel.
- (5) All assessments have the same force and effect as other liens for taxes and their collection shall be enforced in the way provided for enforcement of liens for county taxes. Assessments, if not paid, become delinquent at the same time as county taxes.

Section 21. The directors may exercise the right of eminent domain. The right shall be exercised in the manner provided by law to take private property with just compensation. The district shall not have the right of eminent domain over title to vested water rights. The right of eminent domain for fish, wildlife, and recreation is limited to a project site.

Section 22. Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the water board. Reports shall be in the form, and contain the information, prescribed by the water board.

Section 23. At least once each year the state examiner shall examine the financial records of each district and file a report of the examination with the water board and court. The state examiner shall collect a fee for the examination of seven dollars fifty cents (\$7.50) per man hour.

Section 24. (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last completed assessment roll of some county within the district for state, county and school district taxes are electors and shall be entitled to vote in elections, provided that:

- (a) an elector need not reside in the district in order to vote;
 - (b) where a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of such corporation shall be entitled to cast a vote on behalf of the corporation;
 - (c) where land is under contract of sale to a purchaser and the contract is recorded, the purchaser, if otherwise qualified, shall have the right to vote;
 - (d) guardians, executors, administrators, and trustees of real property within the district, shall be entitled to cast the vote for the owner of the land.
- (2) When voting, an agent of a corporation or co-owners, guardians, executors, administrators, trustees, or purchasers under contract of sale, shall file a written instrument of authority with the county clerk of the county having the largest portion of the taxable valuation of real property of the district, or in the case of the organizing election, the district court, fifteen (15) days before the election.

Section 25. Election procedures are:

- (1) the directors shall designate the polling places, at least one (1) in each county, and hours when the polls will be open;
- (2) notice shall be published of the location of polling places and hours when the polls are open as provided in Section 3 (11) of this act;
- (3) the directors shall appoint three (3) judges for each polling place and fix their compensation;
- (4) the judges shall appoint one (1) of their number as clerk of the election;
- (5) the directors shall supply poll-lists, registers, ballots, and other necessary election supplies;
- (6) registers shall be kept and ballots counted in the way provided for school elections;

- (7) the judges shall certify the results to the directors;
- (8) the directors shall canvass the returns.

Section 26. An elector may challenge any person who claims the right to vote. Before voting, any person challenged must take and sign the following oath or affirmation administered by an election judge:

"I.....(name).....solemnly swear (or affirm) that I am an elector of the district and have not voted today."

False subscription to the oath or affirmation is perjury and punishable as such.

Section 27. A district may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided by this act for the cost of works. Bonds issued shall be for a maximum term of not to exceed forty (40) years and a maximum rate of interest not more than six percent (6%). Bonds for more than one purpose may be sold as a single issue.

Section 28. In determining the amount of bonds to be issued, the directors may include:

- (1) all costs of works;
- (2) all costs and estimated costs of issuance of the bonds;
- (3) interest which they estimate will accrue on borrowed money during the construction period and for six (6) months after the period.

Section 29. When the directors find it necessary to issue bonds, the directors shall:

- (1) pass a resolution which includes;
 - (a) the purpose or purposes for which the bonds will be issued;
 - (b) a description of the real property in the district to be benefited;
 - (c) the maximum amount and term of the bonds;
 - (d) the maximum interest rate the bonds will bear;
 - (e) whether the bonds will be repaid from revenues, assessments, or both.
- (2) give notice as provided in Section 3 (11) of this act which shall include the resolution adopted by the directors, location of polling places, and hours when the polls will be open;
- (3) held an election as provided by Section 25 of this act.

Section 30. (1) For a bond issue to be approved, sixty percent (60%) of the qualified electors voting on the question must approve the issue.

- (2) Approval of the bond issue shall authorize the directors to make assessments as provided in Section 16 (3) necessary to pay the principal and interest on bonds issued.
- (3) The directors shall enter the results of the election in their records.
- (4) If otherwise fairly conducted, no irregularities or informalities shall invalidate the election.
- (5) Bonds for more than one purpose may be submitted to the electors as a single proposition.

Section 31. If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. After adequate notice that sealed proposals will be received, the directors shall award the purchase to the highest responsible bidder. However, if no award is made, bonds may then be sold at private sale.

Section 32. Bonds issued under this act have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

Section 33. Pending preparation of the bonds sold under this act, receipts or certificates may be issued to purchasers in the form, and with provisions, as determined by the directors. Bonds and interim receipts or certificates are fully negotiable as provided by the Uniform Commercial Code—Investment Securities.

Section 34. (1) When duly executed, all bonds issued under this act shall be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. They shall be registered in a book provided for that purpose before being delivered to the purchaser.

- (2) The registration shall show:
 - (a) the number and amount of each bond;
 - (b) the date of issue and date redeemable;
 - (c) the name of the purchaser;
 - (d) the amount and due date of all payments required on the bonds.
- (3) The directors shall provide the county treasurer with an unsigned and cancelled printed copy of each issue of bonds of the district. The copy shall be preserved in his office.

Section 35. (1) Proceeds from the sale of bonds shall be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

- (2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds shall be paid by the county treasurer on written order of the directors. Proceeds shall only be spent for the purposes for which the bonds were issued.
- (3) The directors may instruct the county treasurer to deposit any part of the proceeds which is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank insured by the Federal Deposit Insurance Corporation or in direct obligations of the United States government. The obligations shall be payable within not to exceed one hundred eighty (180) days from the time of deposit or investment.

Section 36. (1) Refunding bonds may be issued in the same way as any other bonds authorized by this act.

- (2) Refunding bonds may:
 - (a) with the consent of the holders of the bonds, be exchanged at par plus accrued interest for all or any bonds issued by the district; or
 - (b) be sold at a price not less than par plus accrued interest.

Section 37. (1) Nothing in this act requires the holder of any outstanding bond to accept payment or a refunding bond in exchange for the outstanding bond, except in accordance with the terms of the outstanding bond.

- (2) Refunding bonds may be issued to refund interest as well as principal due and payable, but not to refund any bond or interest due which can be paid from revenue and assessments on hand.

Section 38. Revenue, assessment, and other funds on hand, including reserves pledged for the payment and security of outstanding bonds may be deposited in an escrow fund created for the retirement of bonds and may be invested and disbursed as provided by this act, to the extent consistent with the resolution authorizing the outstanding bonds.

Section 39. (1) The directors by resolution may establish revolving funds to finance, on a reimbursable basis:

- (a) construction, purchase, lease and operation of revenue producing works;
 - (b) contracts to provide services or facilities.
- (2) The limitation on the borrowing power of the district, as provided by section 14 (23) of this act, shall not control any obligations resulting from the fulfillment of a resolution establishing a revolving fund.
- (3) Money in the revolving fund shall not be spent for any purposes other than those specified in the resolution. However, excess money may be transferred to any sinking and interest fund of the district.

- (4) The county treasurer of the county having the largest portion of the taxable valuation of real property of the district shall maintain a separate account for each revolving fund of the district, and all money collected under the resolution shall be deposited with the county treasurer.

Section 40. (1) In case two (2) or more districts have been organized in a territory which, in the opinion of the directors of each of the districts, should constitute but one (1) district, the directors of the districts may petition the court for an order uniting the districts into a single district. The petition shall be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this act would be subserved by the union of the districts and that the union would promote the economical execution of the purposes for which the districts were organized.

- (2) Upon the filing of the petition, the court shall by order fix a time and place of hearing; and the clerk shall give notice as specified in section 3 (11) of this act as well as by registered mail to the board or boards of the district or districts which it is desired to unite with the district of the petitioners. The notice shall contain the purpose, time, and the place of the hearing.
- (3) Upon the hearing, should the court find that the averments of the petition are true and that the districts, or any of them, could feasibly and profitably be united, it shall order that elections be carried out as specified in Section 25 of this act. If a majority of the qualified electors voting on the proposition favor the action, the court shall order that the merger take place and the districts shall be united into one (1) district and proceed as such. The court shall designate the corporate name of the united district, and further proceedings shall be taken as provided for in this act. The court shall by order appoint the directors of the united district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.
- (4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one (1) or more of the districts described in the petition be included in another of the districts, which other shall continue under its original corporate name and organization; or the court may direct that the district or districts so absorbed shall be represented on the directors of the original district, designating what members of the directors of the original district shall be retired from the new board, and what members representing the included district or districts shall take their places.

Section 41. To annex real property to the district, the procedure is:

- (1) a petition shall be presented to the court;
- (2) the petition shall:
 - (a) give a general description of the real property to be annexed sufficient to enable a person to determine if his property is in the proposed annexation;
 - (b) describe the benefits to accrue to the real property as a result of the annexation,
 - (c) be signed by not less than the number of prospective electors required to sign a detailed study request by Section 8 (3).

Section 42. Upon receipt of a petition for annexation, the court shall:

- (1) give notice and hold a hearing on the petition;
- (2) order annexation if the petition includes all electors of the area to be annexed and there is no protest;
- (3) if the petition includes less than all electors, or if there is a protest, order an election according to the procedure for organization of a district as provided by Section 25 of this act.

Section 43. Real property annexed to a district shall not incur any liens by reason of bonds issued before annexation.

Section 44. Any territory included within any water conservancy district formed under the provisions of this act, and not benefited in any manner by such district, or its inclusion therein, may be excluded therefrom by order of the directors of such district. The procedure for exclusion is:

- (1) A petition for exclusion shall be initiated by either the directors or the owner or owners in fee of the land sought to be excluded.
- (2) The petition shall give a description of the territory sought to be excluded sufficient to enable a person to determine if his property is in the proposed exclusion and shall set forth that such territory is not benefited in any manner by the water conservancy district or its continued inclusion therein, and shall request that such territory be excluded from the district.
- (3) When owners of property initiate the petition for exclusion, the petition shall be filed with the secretary of the district and shall be accompanied by a deposit of one hundred dollars (\$100) to meet the expenses of advertising and other costs incident to the process of exclusion. The unexpended balance of the deposit shall be returned to the petitioner.
- (4) Upon the filing of such petition with the secretary of the district, the secretary shall call a meeting to consider the petition not less than thirty (30) nor more than sixty (60) days from the time of the filing of the petition. Notice of the date, time, place and purpose of such meeting shall be published as provided in Section 3 (11) of this act.
- (5) Any elector, as defined in Section 24 of this act, has the right to appear at the hearing, either in behalf of, or in opposition to, the granting of the petition.
- (6) If upon the hearing the directors determine that it is for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if it appears that the lands, or some portion thereof, will not be benefited by their continued inclusion in the district, then the directors shall make an order that the lands or a portion thereof, be excluded from the district, such order to describe specifically the lands so excluded. The decision either permitting or disallowing exclusion, is deemed to be a final decision and is appealable.
- (7) If the decision is to allow exclusion, a copy of the order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county clerk and recorder of the county or counties in which the district is situated.

Section 45. (1) The procedure for dissolution of a district is:

- (a) a resolution shall be passed by the directors requesting dissolution; or
 - (b) a petition is signed by twenty percent (20%) of the electors representing ten percent (10%) of the taxable valuation of real property in the district; or
 - (c) if inactive for one (1) year or more, any elector may present a petition.
- (2) The resolution or petition shall be presented to the court.
 - (3) Not more than one (1) resolution or petition may be presented to the court in any twenty-four (24) month period.

Section 46. (1) After receipt of petition or resolution, the court shall order an election in the way provided by section 25 of this act.

- (2) For dissolution to be approved, a majority of the electors voting must favor dissolution.

Section 47. (1) In the event the vote is for dissolution, any qualified elector, or the board of directors of the district may, within the time fixed by the court, present a written plan for terminating the affairs of the district which shall include assignment of any water rights and works owned by the district.

- (2) The plan may specify that the affairs of the district shall be terminated by the directors or by a receiver appointed by the court.
- (3) On a day fixed by the court, the court shall consider the plan or plans and shall enter an order establishing a plan for the termination of the affairs.
- (4) The court shall retain jurisdiction to modify the plan and shall supervise the termination.

Section 48. (1) If no plan is presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

- (2) Upon the appointment of any receiver all the authority of the directors shall cease. However, its authority to levy assessments for
 - (a) the payment of obligations of the district;
 - (b) the costs of terminationshall continue until the district is dissolved.
- (3) The directors shall make assessments each year in an amount large enough to retire the obligations as originally scheduled.
- (4) If a receiver has been appointed, he shall direct, under court supervision, the disposition of all assessments collected.

Section 49. When it appears to the satisfaction of the court that:

- (1) all obligations of the district have been discharged;
- (2) all the costs of termination have been paid, the court shall enter an order dissolving the district.

A certified copy of the order shall be recorded by the clerk of the court in all counties in which the district was situated.

Section 50. All funds remaining after dissolution of a district shall be deposited in the state general fund.

Section 51. The retention, release, regulation, or control of water for domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, wildlife, or other purposes shall be a beneficial use within the meaning of Chapter 8, Title 89, R. C. M. 1947. The water right associated with the use may be measured in acre feet rather than in feet per second where the acre feet measurement is more appropriate to the particular use.

Section 52. The provisions of this act shall not be construed to, in any manner, abrogate or limit the rights, powers, duties and functions of the water board, state soil conservation committee, soil and water conservation districts, or the fish and game commission, but shall be held to be supplementary thereto and in aid thereof.

Section 53. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

